

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

XUAN T. NGUYEN,

Plaintiff,

v.

HAMILTON EXHIBITS LLC,

Defendant.

Case No. 1:19-cv-4330-JRS-DML

**DEFENDANT'S NOTICE OF NO OPPOSITION FILED IN RESPONSE TO ITS
MOTION FOR CONTEMPT AND SANCTIONS FOR SPOILATION OF EVIDENCE**

Defendant Hamilton Exhibits, LLC respectfully files this Notice to alert this Court that Plaintiff, Xuan T. Nguyen, failed to oppose Defendant's Motion for Contempt and Sanctions for Spoliation of Evidence, and states as follows:

1. Plaintiff knew he needed to preserve his cellular phone since February 3, 2020, and he was repeatedly reminded to preserve his phone over the course of the next 6 months. (Docs. 32-1 through 32-7)
2. After spending months embroiled in discovery disputes trying to obtain Plaintiff's cellular phone for inspection, the Court ordered Plaintiff to produce his phone for inspection on July 24, 2020 pursuant to an agreed inspection protocol.
3. The Court ordered Plaintiff to produce his phone by August 19, 2020. Two days before Plaintiff was required to produce his phone for inspection, Plaintiff's counsel advised that he lost his phone fishing and would be unable to produce it. (Doc. 32-6)
4. Defendant filed its Motion for Contempt and Sanctions for Spoliation of Evidence (the "Motion") on September 14, 2020, based on Plaintiff's failure to produce his cellular phone

for forensic examination in violation of this Court's Order. (Docs. 30-32) Plaintiff's Response to Defendant's Motion was initially due September 28, 2020.

5. On September 18, 2020, Plaintiff's counsel filed a motion for extension of time to respond to Defendant's Motion, seeking an additional forty-five (45) days to respond to Defendant's Motion. Contemporaneously, Plaintiff's counsel filed a motion to withdraw appearance based on a breakdown of the attorney-client relationship. (Docs. 33-34)

6. In Plaintiff's counsel's "Notice of Intent to Withdraw Letter" sent to Plaintiff on September 18, 2020, Plaintiff's counsel informed Plaintiff of Defendant's pending Motion for Sanctions and Contempt for Spoliation of Evidence. (Doc. 34-2) In the same letter, Plaintiff's counsel informed Plaintiff that (1) he had fourteen (14) days from September 14, 2020 to respond to Defendant's Motion; (2) Plaintiff's counsel requested an additional forty-five (45) days for Plaintiff to respond to Defendant's Motion; and (3) Plaintiff must respond to Defendant's Motion. (*Id.*)

7. This Court granted Plaintiff's motion for extension of time to respond to Defendant's Motion, making Plaintiff's response due November 12, 2020. (Doc. 35) This Court later granted Plaintiff's counsel's motion to withdraw appearance on September 28, 2020. (Doc. 40)

8. Plaintiff did not file a response to Defendant's Motion on November 12, 2020. As of the date of filing of this Notice, Plaintiff has not filed a response to Defendant's Motion. Nor has Plaintiff requested another extension.

9. Defendant seeks dismissal of Plaintiff's Amended Complaint with prejudice as a sanction for his contempt and spoliation of critical evidence.

10. Because Plaintiff failed to oppose Defendant's Motion, Defendant's Motion should be granted in its entirety and Plaintiff's Amended Complaint should be dismissed with prejudice. S.D. Ind. L.R. 7-1(c)(5) ("The court may summarily rule on a motion if an opposing party does not file a response within the deadline."); *Johnson v. Simmons*, 2011 WL 3321299, at *2 (N.D. Ind. Aug. 2, 2011) (finding that plaintiff abandoned his case by failing to respond to Defendant's motion even after receiving an extension to respond and summarily ruling on Defendant's motion pursuant to local rule).

WHEREFORE, Defendant Hamilton Exhibits, LLC respectfully notifies this Court of Plaintiff's non-opposition to its Motion for Sanctions for Contempt and Spoliation of Evidence and requests an Order dismissing Plaintiff Xuan Nguyen's Amended Complaint with prejudice as a sanction for his contempt and spoliation of critical evidence.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2020, a copy of the foregoing *Defendant's Notice of No Opposition to its Motion for Sanctions for Contempt and Spoliation of Evidence* was filed electronically through the Court's electronic filing system. Notice of this filing will be sent to the following parties via First Class United States mail to the address listed below:

Xuan T. Nguyen
158 Longfellow Lane,
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s/ Scott James Preston

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